88-1009

Supreme Court, U.S.
FILED
NOV 28 1988
JOSEPH F. SPANIOL, JR.
CLERK

No. -

In The

# Supreme Court of the United States

October Term, 1988

ARDETH HOUDE, et vir.,

*Appellant,*

*vs.*

RONALD STARKWEATHER, et al.,

*Appellees.*

**On Appeal From The Appellate Division of New York State Supreme Court, Fourth Department**

## JURISDICTIONAL STATEMENT

ARDETH HOUDE, ESQ.
*Pro Se,* and as a member of the bar of the United States Supreme Court
35 Rennselaer Drive
Rochester, New York 14618
Telephone: (716) 232-7411
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November 25, 1988

Daily Record Corporation
Rochester, New York

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5 1 CW

## QUESTION PRESENTED

Whether the classification established by §§ 6-142(2)(a) and 6-136(2)(d) of the New York Election Law, which provides that Democrats and other party candidates need a minimum of 2000 signatures to appear on the ballot for county office, while independent candidates need only 1500 signatures to appear on the ballot for county office, violates the equal protection guarantee of the Fourteenth Amendment to the United States Constitution?

## TABLE OF CONTENTS


| | Page |
|---|---|
| Question Presented | *i* |
| Table of Authorities | *ii* |
| Parties | 1 |
| Jurisdictional Statement | 3 |
| Opinions Below | 3 |
| Jurisdiction | 4 |
| Constitutional Provisions, Statutes and Rules | 4 |
| How the Federal Question was Raised | 6 |
| Statement of the Case | 6 |
| The Question is Substantial | 8 |
| Conclusion | 12 |


## TABLE OF AUTHORITIES


| | Page |
|---|---|
| **CASES:** | |
| *American Party of Texas v. White,* 415 U.S. 767 (1974) | 11 |
| *Hotchkiss v. Smith,* 206 N.Y. 231 (1912) | 11 |
| *Illinois Election Board v. Socialist Workers Party,* 440 U.S. 173 (1979) | 9, 10, 11 |
| *Moscowitz v. Power,* 25 N.Y.2d 933 (1969) | 6, 10 |
| *Storer v. Brown,* 415 U.S. 724, 727 n.10 (1974) | 11 |
| *Young v. Heffernan,* 296 N.Y. 697 (1946) | 10, 11 |
| **OTHER AUTHORITIES:** | |
| N.Y. Election Law § 6-136(2)(d) | 3, 4, 7, 8 |
| N.Y. Election Law § 6-142(2)(a) | 3, 5, 8 |
| 28 U.S.C. § 1257(2) | 4 |

In The

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ARDETH HOUDE, et vir.,

*Appellant,*

*vs.*

RONALD STARKWEATHER, et al.,

*Appellees.*

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**On Appeal From The Appellate Division of New York State Supreme Court, Fourth Department**

---

## JURISDICTIONAL STATEMENT

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### PARTIES

The full caption of the proceeding below is:

Matter of Ardeth Houde and Robert Houde, Appellants,

v

Ronald Starkweather and Marguerite Toole, Commissioners of Elections in the County of Monroe; and Anthony Bonadio, Joan S. Kohout and James L. Hendricks, Respondents. Proceeding No. 1.

---

Matter of Anthony F. Bonadio and James L. Hendricks,

Respondents,

v

Robert A. Houde, Appellant, and
Ronald J. Starkweather and Marguerite L. Toole, Commissioners of the Board of Elections for the County of Monroe, Respondents. Proceeding No. 4.

---

Matter of Jean B. Higgins, Respondent,

v

Ardeth L. Houde, Appellant, and
Ronald J. Starkweather and Marguerite L. Toole, Commissioners of the Board of Elections for the County of Monroe, Respondents. Proceeding No. 2.

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Matter of David C. King, Respondent,

v

Ardeth L. Houde, Appellant, and
Ronald J. Starkweather and Marguerite L. Toole, Commissioners of Board of Elections for the County of Monroe, Respondents. Proceeding No. 3.

---

The attorneys appearing for each of the parties below are:

Michael J. Regan, Esq., 45 Exchange Street, Suite 617, Rochester, New York 14614, Attorney for Appellants Houde;

Thomas Spargo, Esq., 314 State Street, Albany, New York 12210, Attorney for Respondents Bonadio and King;

Eugene Welch, Esq., Assistant Attorney General, 144 Exchange Boulevard, Rochester, New York 14614;

Karolyne Armer and John Pericak, Esqs., 47 South Fitzhugh Street, Suite 600, Rochester, New York 14614, Attorney for Respondent Hendricks;

Raymond J. Lum, Esq., 307 County Office Building, Rochester, New York 14614, Attorney for Respondents Monroe County Board of Elections and;

Gary Muldoon, Esq., 1135 East Main Street, Rochester, New York 14609, Attorney for Respondents Kohout and Higgins.

## JURISDICTIONAL STATEMENT

ARDETH HOUDE, the Appellant, appeals from the final judgment of the Appellate Division of the New York State Supreme Court, Fourth Department, dated August 29, 1988, and denial of leave to appeal therefrom by the New York Court of Appeals dated August 31, 1988, which held that §§ 6-136 and 6-142 of the Election Law of the State of New York did not violate the equal protection guarantee of the Fourteenth Amendment to the United States Constitution by denying her access to the ballot solely because she sought access as a Democrat and not as an Independent.

## OPINIONS BELOW

The opinion of the New York State Supreme Court, dated August 18, 1988, and the New York State Supreme Court, Appellate Division, Fourth Department, dated August 29, 1988, are not reported. They are reprinted in the Appendix hereto, p. 13 and 32, *infra*.

The New York Court of Appeals denied leave to appeal without opinion. The Order denying the motion for leave to appeal is reprinted in the Appendix hereto, p. 33, *infra*.

## JURISDICTION

The judgment of the Appellate Division of the New York State Supreme Court, Fourth Department, denying Appellant access to the September 15, 1988 primary election ballot, was entered on August 29, 1988. *See,* Appendix, p. 29, *infra*. Leave to appeal was denied by order of the New York Court of Appeals entered August 31, 1988. *See,* Appendix, p. 33, *infra*. A Notice of Appeal to this Court was timely filed in the Appellate Division of the New York State Supreme Court, Appellate Division, Fourth Department, on September 7, 1988. *See*, Appendix, p. 35, *infra*.

This appeal is being docketed in this Court within ninety (90) days of the decision appealed from below. The jurisdiction of this Court is invoked pursuant to 28 U.S.C. § 1257(2).

## CONSTITUTIONAL PROVISIONS, STATUTES AND RULES

Fourteenth Amendment, United States Constitution: *** No State Shall *** deny to any person within its jurisdiction the equal protection of the laws.

**Election Law of the State of New York**

**§6-136.** Designating petitions; number of signatures

1. . .

2. All other petitions must be signed by not less than five (5) percentum as determined by the preceding enrollment, of the then enrolled voters of the party residing within the political unit in which the office or position is to be voted for, provided, however, that for the following public offices the number of signatures need not exceed the following limits:

(a). . .

(b). . .

(c). . .

(d) For any office to be filled by all the voters of cities or counties except the City of New York and counties therein, containing more than Two Hundred Fifty Thousand (250,000) inhabitants according to the last preceding federal enumeration, Two Thousand (2,000) signatures;

**§6-142. Independent nominations; number of signatures**

1. . .

2. An independent nominating petition for the nomination of candidates for an office to be filled by the voters of any other political unit must be signed by voters numbering five (5) percentum of the total number of votes cast for Governor at the last gubernatorial election in such unit, excluding blank and void votes, except that not more than Three Thousand Five Hundred (3,500) signatures shall be required upon any such petition for any office to be filled in any political subdivision of the state wholely outside the City of New York, and not more than the following numbers of signatures shall be required upon any such petition for the following public offices respectively:

(a) for any office to be filled in any county or portion thereof outside the City of New York, One Thousand Five Hundred (1,500).

## HOW THE FEDERAL QUESTION WAS RAISED

Appellant first raised the federal question presented in her Amended Verified Petition, filed in State Supreme Court on August 5, 1988. That Petition sought to validate the signatures on a political petition designating Appellant as a Democratic candidate for Monroe County Family Court Judge in the September 15, 1988 primary election. In that Petition, Appellant argued that her political petition contained at least two thousand valid signatures, enough to qualify her for the primary ballot under the New York Election Law. In the alternative, she argued that, because no one disputed that her political petition contained at least fifteen hundred valid signatures, the two thousand signature requirement for party candidates denied her equal protection of the law under the United States Constitution, in that an Independent candidate would have needed only fifteen hundred signatures to appear on the ballot for the same office. *See,* Appendix, p. 4, *infra.* This equal protection claim was also raised at oral argument. *See,* Appendix, p. 8-9, *infra.*

The State Supreme Court rejected Appellant's equal protection argument, and upheld that challenged statutory classification, relying on *Moscowitz v. Power,* 25 N.Y.2d 933 (1969). *See,* Appendix, p. 13, *infra.* On appeal, Appellant reiterated her equal protection claim in her brief to the Appellate Division of State Supreme Court, Fourth Department. *See,* Appendix, p. 27, *infra.* That court also denied relief on the federal constitutional claim, modified the trial court's decision as to a matter of state law and affirmed the order denying Appellant access to the ballot. *See,* Appendix, p. 32, *infra.*

## STATEMENT OF THE CASE

The Appellant, Ardeth Houde, having been admitted to the practice of law in the State of New York in June of 1959, and having served as a Family Court Law Guardian for 11 years, announced her candidacy for Monroe County Family Court Judge in July of 1988. On July 14, 1988, in order to appear on the ballot as a Democratic candidate for that office in the September 15, 1988 primary election, she filed a political petition containing the signatures of 2,385 Democrats, 385 signatures more than the number required for Democratic candidates under § 6-136(2)(d) of the New York Election Law.

Appellant's candidacy was opposed by the County Democratic Committee, and on July 25, 1988, objections to her political petition were filed with the Monroe County Board of Elections. The objections alleged that parts of Appellant's political petition did not comply with the many technical provisions of the New York Election Law; none of the objections pertained to the authenticity of the signatures on her petition.

On July 29, 1988, the Monroe County Board of Elections Commissioners, Ronald Starkweather and Marguerite Toole, two of the Appellees herein, decided that many of the signatures on Appellant's political petition were technically deficient, and that that petition contained at a minimum only 1,638 valid signatures. *See,* Appendix, p. 1, *infra.* Concluding that the Appellant's political petition fell 362 signatures short of the statutorily requires 2000, the Board invalidated the petition.

On July 28, 1988, Appellant commenced a proceeding in the State Supreme Court to validate her petition and to apply for an order placing her name on the ballot as a Democratic candidate for Monroe County Family Court Judge. In her Amended Verified Petition, she argued, *inter alia,* that the 2000 signatures required of Democratic and other party candidates "denied . . .

(her) . . . equal protection of the law" under the state and federal constitutions, in that Independent candidates needed only 1500 signatures to appear on the ballot for the same office. *See,* Appendix, p. 4, *infra.* At oral argument, before the New York State Supreme Court, she argued that the state should be required to show that a "compelling governmental interest" supported this unequal classification. *See,* Appendix, p. 9, *infra.*

Despite this timely raised and constitutionally specific challenge to this discriminatory statutory classification, the state trial court denied the relief she sought. Appellant filed a notice of appeal, and notified the Attorney General that she intended to challenge the constitutionality of a state statute. *See,* Appendix, pp. 16, 24, *infra.* The equal protection claim was pressed on appeal, both in the appellate brief and at oral argument, yet the trial court's order was affirmed. In its opinion, the appellate court ignored the equal protection claim. Leave to appeal further to the state's highest court was denied without opinion.

On September 7, 1988, Appellant filed in the State Supreme Court, Appellate Division, Fourth Department, a Notice of Appeal to this Court. *See,* Appendix, p. 35, *infra.* All parties to the state court proceedings were served by mail that same day with a copy of the Notice of Appeal. Appellant also simultaneously filed with this Court an Application for Writ of Injunction, addressed to the Honorable Thurgood Marshall as Circuit Justice for the Second Circuit, seeking preliminary relief in the form of an Order directing the Appellees to place her name on the ballot for the September 15, 1988 primary election. *See,* Appendix, p. 35, *infra.* On September 15, 1988, the Application was denied.

## THE QUESTION IS SUBSTANTIAL

New York's Election Law has established that 2000 signatures is the minimum number necessary to qualify a Democratic party candidate for the county ballot, but that an Independent candi-

date needs only 1500 signatures to appear on the ballot for the same office in the same county. *See,* Election Law §§ 6-136(2)(d) and 6-142(2)(a). This disparate signature requirement applies to all New York counties outside the City of New York with populations of more than 250,000, one of which is Monroe County.

This classification burdens the Appellant, whose political petition concededly contained 1638 valid signatures, but who was excluded from the ballot solely because she sought to appear as a Democrat, and not as an Independent. Had her preference been to appear as an Independent, Ardeth Houde's name would have appeared on the general election ballot as a candidate for Monroe County Family Court Judge.

This legislative classification, based solely on a candidate's political preference, and determinative of Appellant's right of access to the ballot, denies Appellant equal protection of the law, both on its face and as applied in this instance.

In *Illinois Election Board v. Socialist Workers Party,* 440 U.S. 173 (1979), this Court held that where a State conditions access to the ballot upon disparate signature requirements for similarly situated candidates, an equal protection challenge to the classification merits strict scrutiny. Such scrutiny places upon the state the burden of showing that the classification is necessitated by a compelling governmental interest.

Here, the signatures gathered by the Appellant would have placed her on the ballot but for one distinction — she chose to run as a Democrat rather than as an Independent. A similarly situated Independent candidate, running for the same office in the same county, and having gathered the same number of signatures supporting her candidacy, would have been granted access to the election ballot by the State of New York.

Because the only basis for this statutory discrepancy is the political affiliation of the candidate, this classification strikes at the heart of our Constitution's equal protection guarantee — that the State must govern impartially as to matters of race, religion, voting and the freedoms of expression and political affiliation. A state which treats its citizens more favorably because they are Republicans rather than Socialists, or Protestants rather than Catholics, does not govern impartially under the Fourteenth Amendment. *Illinois Elections Board, supra,* at 189 (Stevens, J., concurring). Neither does a state which treats its citizens more favorably because they are Independents rather than members of the Democratic party.

Nor can a state govern impartially when it restricts access to the ballot in an arbitrary manner. "Voting is of the most fundamental significance under our constitutional structure." *Illinois Elections Board,* at 241. Restrictions on ballot access also implicate the fundamental right of citizens to associate for the advancement of political beliefs, and to cast their votes effectively. *Id.* These rights, central to our Constitution, cannot be abridged casually by arbitrary or disparate legislative treatment. A state must demonstrate that it has a compelling governmental interest if it wishes to favor one of its citizens seeking access to the ballot over another citizen, who is similarly situated.

As is evident from a review of the state trial and appellate court opinion, no such compelling governmental interest was found to support the challenged classification. These courts erred as a matter of law by failing to apply the "strict scrutiny" test prescribed by this Court's opinion in *Illinois Elections Board, supra.*

Instead, the state courts relied on *Moscowitz v. Power,* 25 N.Y.2d 933 (1969) to sustain the statutory classification, a case antedating *Illinois Elections Board* by ten years. *See,* Appendix, p. 13, *infra. Moscowitz* upheld the constitutionality of unequal

signature requirements for Independent and Party political petitions seeking access to the ballot for the same office. *Id* at 934. The Court of Appeals, without opinion, summarily affirmed a lower court order denying access to the ballot, citing *Young v. Heffernan,* 296 N.Y. 697 (1946). *Young,* twenty-three years earlier, had upheld a huge disparity in signature requirements for Independent and Party petitions over a similar constitutional challenge. *Young,* too, was a summary affirmance of a lower court decision denying access to the ballot, and cited *Hotchkiss v. Smith*, 206 N.Y. 231 (1912).

For some time now, the New York legislature and courts have imposed unequal and arbitrary signature requirements upon certain of its citizens seeking access to the ballot. In the instant case, such requirements were upheld against a federal equal protection challenge founded specifically upon this Court's decision and opinion in *Illinois Elections Board.* This State's government will continue to ignore its duty to govern impartially as to matters involving access to the ballot unless this Court intervenes and notes probable jurisdiction of this appeal. The obvious political implications of this case make it unlikely to be dealt with fairly in the state courts.

Moreover, that the State of New York held a general election for the office of Monroe County Family Court Judge on November 8, 1988 does not render this appeal moot. *Storer v. Brown,* 415 U.S. 724, 727 n.10 (1974); *American Party of Texas v. White,* 415 U.S. 767 (1974). Election controversies are typically "capable of repetition, yet evading review". *Id.* This Court remains Constitutionally empowered to provide declaratory and injunctive relief.

## CONCLUSION

For these reasons, this Court should note probable jurisdiction of this appeal.

Respectfully Submitted,

ARDETH HOUDE,
*Pro se,* and as a member
of the bar of the
United States Supreme Court
35 Rensselaer Drive
Rochester, New York 14618

# APPENDIX

**[Monroe County Board of Elections Letterhead]**

July 29, 1988

Ardeth L. Houde
35 Rensselaer Drive
Rochester, New York 14618

Dear Ms. Houde,

At a meeting of the Election Commissioners, Ronald J. Starkweather and Marguerite L. Toole, of the Monroe County Board of Elections held on July 29, 1988, it was moved, seconded and approved that the specific objections filed by David C. King against the Democratic Designating Petition of Ardeth L. Houde for the office of Monroe County Family Court Judge were valid.

Each of the specific objections was ruled upon. 747 of the specific objections were sustained leaving the petition with 1,638 valid signatures. 2,000 signatures were needed for the petition to qualify. Due to an insufficient number of valid signatures the petition was declared invalid.

[Signature]
RONALD J. STARKWEATHER
PRESIDENT

[Signature]
MARGUERITE L. TOOLE
SECRETARY

**[Monroe County Board of Elections Letterhead]**

July 29, 1988

Ardeth L. Houde
35 Rensselaer Drive
Rochester, New York 14618

Dear Ms. Houde,

At a meeting of the Election Commissioners, Ronald J. Starkweather and Marguerite L. Toole, of the Monroe County Board of Elections held on July 29, 1988, it was moved, seconded and approved that the specific objections filed by Jean B. Higgins against the Democratic Designating Petition of Ardeth L. Houde for the office of Monroe County Family Court Judge were valid objections.

2,000 valid signatures were needed for the petition to qualify. 678 objections to the petition were sustained leaving the petition with 1,707 valid signatures. The petition lacks a sufficient number of signatures and is thereby invalid.

[Signature]
RONALD J. STARKWEATHER
PRESIDENT

[Signature]
MARGUERITE L. TOOLE
SECRETARY

**VERIFIED AMENDED PETITION**
Index No. 7668/88

STATE OF NEW YORK
SUPREME COURT COUNTY OF MONROE

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In the Matter of the Application of Ardeth Houde and Robert Houde, Petitioners, For an Order, pursuant to the Election Law, declaring invalid the Democratic and Republican Designating Petitions purporting to designate Anthony Bonadio, Joan S. Kohout and James L. Hendricks for the office of Monroe County Family Court Judge, and the Application of Ardeth Houde, an Aggrieved candidate, for an Order declaring valid the Petition designating said candidate for the office of Monroe County Family Court Judge, and compelling the Monroe County Board of Elections to restore said candidate to the ballot, all for the primary election to be held September 15, 1988,

Petitioners,

v.

Ronald Starkweather and Marguerite Toole, Commissioners of Elections in the County of Monroe; Anthony Bonadio, Joan S. Kohout and James L. Hendricks, Candidates purportedly designated for the office of Monroe County Family Court Judge; John Doe, an unknown person who filed specific objections to the Petition designating Ardeth Houde as a candidate for the office of Monroe County Family Court Judge in the September 15, 1988 primary election; and Jean Higgins, a known objector to said Petition,

Respondents.

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16. The specific objections filed by Jean Higgins and John Doe were not timely filed and null and void under election Law § 6-154. Therefore, The Monroe County Board of Elections erred in ruling on those objections and invalidating Ardeth Houde's Designating Petition.

17. The signature of each objector filing specific objections to said Petition was not duly acknowledged by a Notary Public or Commissioner of Deeds. Therefore, it is impossible to determine whether each objector was the same person who filed general objections. Absent the signature of each objector being acknowledged, the Board could not determine whether the specific objections were valid, and erred in ruling on those objections and invalidating Ardeth Houde's Designating Petition.

18. The specific objections to said Petition that were filed by a John Doe do not contain a legible description of the name of the objector. Election Law § 6-154 requires that all objections be written: It is submitted that this requirement means that the name of the objector be legibly written. Therefore, the Board of Elections erred in ruling on those objections and invalidating Ardeth Houde's Designating Petition thereon.

19. The statutory requirements that Two Thousand (2,000) signatures are necessary to designate a party candidate for County-wide office, imposed by Elections Law § 6-136 (2)(d), while only Fifteen Hundred (1,500) signatures will suffice to designate an independant candidate for County-wide office under § 6-142 (2)(a), denies Ardeth Houde equal protection of the law and due process of law under the New York State and United States Constitutions. Because the Board of Elections ruled that Ardeth Houde's Designation Petition contains more than Fifteen Hundred (1,500) valid signatures, the Petition should be validated.

20. The Monroe County Board of Elections erred in its' determination that uninitialed alterations to the signer's residence and District addresses invalidate the signer's signature. Under § 6 134 (8), the signer's need not fill in that information, but only place his/her signature on the petition. The signer's residence and Dis-

trict addresses need only be correct and authenticated by the witness.

Therefore, the Board improperly invalidated the following signatures from Ardeth Houde's Designating Petition:

| Page | Number | Total |
|---|---|---|
| 46 | 8 | 8* |
| 94 | 1-15 | 15* |
| 112 | 1-15 | 15 |
| 113 | 1-12 | 12 |
| 114 | 1-2, 15 | 3 |
| 130 | 2,3,4 | 3 |
| 140 | 2 | 1* |

SUPREME COURT : STATE OF NEW YORK
COUNTY OF MONROE

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JEAN B. HIGGINS,

Petitioner,

-vs- #88/07664

ARDETH L. HOUDE, RONALD S. STARKWEATHER, MARGUERITE C. TOOLE,

Respondents.

---

ARDETH HOUDE,

Petitioner,

-vs- #88/7668

RONALD STARKWEATHER, MARGUERITE TOOLE, MONROE COUNTY BOARD OF ELECTIONS, ET AL,

Respondents.

---

ANTHONY J. BONADIO and JAMES L. HENDRICKS,

Petitioners,

-vs- #88/07678

ROBERT A. HOUDE, ALLEGED OBJECTOR and RONALD J. STARKWEATHER AND MARGUERITE TOOLE, ET AL,

Respondents.

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DAVID C. KING,

Petitioner,

-vs- #88/07679

ARDETH L. HOUDE,

Respondent.

---

Hall of Justice
Rochester, New York
August 5, 1988

Before:

HONORABLE DANIEL A. DE PASQUALE,
Supreme Court Justice

Appearances:

DYMKAR & MULDOON, ESQS.
BY: GARY MULDOON, ESQ.
Attorney for Jean B. Higgins
and Joan S. Kohout

RAYMOND LUM, ESQ.
Attorney for Board of Elections

JOHNSON, MULLAN, BRUNDAGE & KEIGHER, PC
BY: JOHN G. PERICAK, ESQ.
Attorneys for David King, Jim Hendricks
and Anthony Bonadio

MICHAEL REGAN, ESQ.
Attorney for Ardeth and Robert Houde

ROBERT J. PARESI
Official Court Reporter

[1A]

AUGUST 5, 1988 (A.M. SESSION)

THE COURT: Let me state for the outset, counselor, I think I have received all of the documents that have been submitted. Is there anything else to be submitted?

MR. REGAN: Yes, Your Honor, there is. Ardeth and Robert Houde filed an amended petition which was served on all opposing counsel yesterday and I have the original for the Court.

THE COURT: That I didn't see. If you hand that up.

Gentlemen, there is no problem with this amended petition?

MR. LUM: No.

THE COURT: Any opposition to the filing of this amended petition?

MR. MULDOON: Yes, Your Honor, I would submit it is given the posture of this case an Election Law case to amend one day before the date of the hearing is inappropriate and the Court should use its discretion in denying the amendment. As the Court is aware, and I believe other respondents in this case have filed answers to this and we have not had the opportunity to file amended answers to

MR. REGAN: [22A-24A]
only person who can file specific objections is an enrolled member of the party. A person who is eligible to vote for the office being sought by the designating petition and most importantly the only person who can file specific objections is an individual who filed general objections three days after the last date to file designating petitions. It was extremely important that Ardeth Houde knew which individual, which person was filing these objections and not only were they filed late but they were filed without any legible description of who the objector was. Mr. Lum, I believe has submitted a copy of those John Doe objections and I would ask Your Honor to rule that the Board of Elections should not have even considered them because it was patently unfair to Ardeth Houde as a matter of due process and fundamental fairness not to know who here accuser was and to be put in a position not to be able to serve that objector with the necessary papers for jurisdiction over him for purposes of Court review here.

Your Honor, there were additional reasons why the Board of Elections erred in invalidating Ardeth Houde's petition. And in

saying this I am averting to the constitutional issue that was raised. It just so happens that the Election Law provides that a party candidate who is seeking county-wide office must obtain two thousand signatures in order to designate that person for county-wide office that they might stand for election in a primary election. Yet contradictory-wise the Election Law provides that only fifteen hundred signatures and not two thousand are necessary to designate an independent candidate for a county-wide office. So, if Ardeth Houde had been running for an independent nomination or independent designation we would not be here today because the Board has acknowledged that she has more than fifteen hundred valid signatures on her petition and yet because Ardeth Houde is challenging the organized political party structure, she has to get two thousand signatures and Your Honor, we would submit that this denies her equal protection of the law that because this legislative classification impinges upon a fundamental right which is the right to vote, which is the right to engage in a political process that this Court should apply strict scrutiny under the state and federal constitutions and require the state to show that behind that statute there is a compelling governmental interest that justifies such unjust and dispairity treatment of Ardeth Houde. I would suggest, Your Honor, that not only can a compelling governmental interest be shown I would suggest there is no rationale basis for that classification at all. I would suggest the only real purpose designed behind that classification is to make it more difficult for an independent candidate to challenge the party than it is for an independent candidate to run as an independent. I would suggest that what is the real reason behind the dispairity treatment behind Ardeth Houde.

Finally, going to the merits of the Election Law and the petition below I would suggest that the Board of Elections made three errors of law. At least three but three to be argued here that resulted in the improper invalidation of three hundred and thirty

of Ardeth Houde's signatures. Now, the first issue of law that the Board of Elections failed to properly decide is that it did rule that uninitialed alterations to a signer of

**"EXHIBIT A"**

[Filed Aug 23, 4:20 PM, Monroe Co Clerk's Office]

In the Matter of the Application of

ARDETH HOUDE and ROBERT HOUDE,

Petitioners,

-vs- Index No. 7668/88

RONALD STARKWEATHER and MARGUERITE TOOLE, Commissioners of Elections in the County of Monroe;

and

ANTHONY BONADIO, JOAN S. KOHOUT and JAMES L. HENDRICKS,

Respondents.

For an Order, pursuant to the Election Law, declaring invalid the Democratic and Republican Designating Petitions purporting to designate Anthony Bonadio, Joan S. Kohout and James L. Hendricks for the Office of Monroe County Family Court Judge and the application of Ardeth Houde, an Aggrieved candidate, for an Order declaring valid the Petition designating said candidate for the office of Monroe County Family Court Judge, and compelling the Monroe County Board of Elections to restore said candidate to the ballot, all for the primary election to be held September 15, 1988.

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and

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In the Matter of the Application of
ANTHONY F. BONADIO and JAMES L. HENDRICKS,

Candidates,
Petitioners,

-vs-

Index No. 7678/88

ROBERT A. HOUDE,

Alleged Objector,

and

RONALD J. STARKWEATHER and MARGUERITE L. TOOLE, Commissioners of the Board of Elections for the County of Monroe,

Respondents.

For an order pursuant to Article 16 of the Election Law, to validate the designating Petition of the Monroe County Republican Party designating Anthony L. Bonadio and James L. Hendricks as Candidates for Family Court, County of Monroe and State of New York.

APPEARANCES: MICHAEL J. REGAN, ESQ.
Attorney for Petitioner Houde

JOHNSON, MULLEN, BRUNDAGE & KEIGHER, P.C.
John G. Perichak, Esq., of Counsel
Attorneys for Respondents Bonadio and Hendricks

DYMKAR & MULDOON, ESQS.
Gary Muldoon, Esq., of Counsel
Attorneys for Respondent Kohout

MONROE COUNTY ATTORNEY
Raymond J. Lum, Esq.
Attorney for Respondent Commissioners
Board of Elections

**MEMORANDUM-DECISION**

DANIEL A. DEPASQUALE, J.: In the Houde proceeding, petitioners Ardeth Houde and Robert Houde, her husband, seek a determinating confirming that Ms. Houde's designating petitions contain the requisite number of valid signatures (2,000) to permit her name to be on the ballot of the Democratic primary election for Monroe County Family Court Judge. In addition, she seeks to have the designating petitions of respondents Bonadio and Kohout ruled invalid as not conforming to several specific requirements contained in Article 6 of the Election Law. In addition, her husband, a Republican, challenges the validity of the designating petitions of respondents Bonadio (who has been cross-endorsed to run as both a Republican and a Democrat in the forthcoming primary election) and Hendricks, as Republican nominees for the Family Court Judge position.

Initially, the petitioners have challenged the constitutionality of Election Law § 6-136(2)(d) which requires a party candidate for Family Court Judge to have 2,000 valid signatures in contrast to the provisions of Election Law § 6-142(2)(a) providing that an independent candidate be allowed to submit only 1,500 valid signatures. Such challenge, of course, flies directly in the face of the heavy presumption of the constitutionality of any statute. See, *McKinneys Statutes*, Section 150. Furthermore, as pointed out in the Memorandum of Law furnished by respondents, this challenge has been addressed and denied in *Moscowitz v. Power*, 25 N.Y. 2d 933. See, also, *Moscowitz v. Board of Elections*, 51 Misc. 2d 827, aff'd 35 A.D. 2d 679. The constitutional challenge is denied.

No evidence was presented on behalf of the petitioners, at the hearing conducted by this Court on August 5, 1988, which supports their contention that the Board of Elections erred in its determination invalidating the petitioner Ardeth Houde's designating petitions. Accordingly, and for the reasons set forth in the companion cases of *Higgins v. Houde et al* and *King v. Houde et al*, the Houde petitions are declared invalid and her name is ordered stricken from the ballot for the Democratic primary for the position of Monroe County Family Judge.

With respect to the petitioners' challenges of the designating petitions of Bonadio, Kohout and Hendricks, this Court finds said petitions to be valid for the reasons set forth below.

The challenge by the petitioners to the binding of the respondents' designating petitions is rejected. This Court is satisfied from the exhibits received and the testimony taken at the August 5, 1988 hearing from respondent Margaret L. Toole, one of the Election Commissioners, that the binding satisfied the requirements of § 6-134 of the Election Law as interpreted by the Court of Appeals in *Matter of Sheehan v. Scaringe*, 60 N.Y. 2d 795. With respect to the issue of whether or not the respondents' petitions correctly and adequately describe the geographic territory of the position of Family Court Judge, this Court adopts the reasoning set forth in *Matter of Liepshutz v. Palmateer*, 112 A.D. 2d 1101, aff'd 65 N.Y. 2d 965 that the standard must be "sufficiently informative so as to preclude any reasonable probability of confusing or deceiving the signers, voters or board of elections". Here, the cover sheet of the designating petitions and each sheet of the petitions are addressed to the Monroe County Board of Elections. There is no assertion, or evidence, that such description is misleading, confusing or deceiving. See, *Matter of Donnelly v. Mcneb*, 83 A.D. 2d 896. See, also, *Matter of Jacobson v. Schermerhorn*, 104 A.D. 2d 534.

The challenge to respondent Bonadio's designating petitions based upon a misrepresentation of his residence address is denied. In *Taskos v. Erie County Board of Elections*, 83 A.D. 2d 983, the Court held that strict compliance with the provisions of Election Law § 6-132, with respect to the listing of the candidate's address and place of residence, must be strict enough to prevent deception or the likelihood of confusion. The same Court, in *Brewster v. Cayuga County Board of Elections*, 83 A.D. 2d 983, held that a candidate's address on designating petitions is sufficient if it identifies the candidate to the signatories of the petition, without the possibility of deception, confusion and fraud.

Here, no such possibilities exist. Bonadio listed his residence as the City of Rochester when, in fact, he resides in the Town of Irondequoit. Both municipalities are entirely within the County of Monroe and this Court finds no intent to deceive or confuse a potential signatory on the designating petitions. Accordingly, this challenge is rejected.

The application of Ardeth and Robert Houde is denied and the designating petitions of Kohout, Bonadio and Hendricks are hereby determinating to be valid entitling their names to appear for the office of Monroe County Family Court Judge.

SO ORDERED.

Dated: August 18, 1988
Waterloo, New York

[Signature]
Hon. Daniel A. DePasquale

[Filed Aug 23, 4:20 PM, Monroe Co Clerk's Office]

## NOTICE OF APPEAL

[Received Aug 22, 1988, 12:28 PM, Monroe Co Clerk's Office]

PLEASE TAKE NOTICE, that the above named Ardeth Houde, Petitioner in Action #1, and aggrieved candidate in Actions #2 and 3, and Robert Houde, co-petitioner in Action #1, and objector in Action #4 hereby appeal(s) to the Appellate Division of the Supreme Court of the State of New York, Fourth Judicial Department, from the Orders of the Monroe County State Supreme Court the trial court in this action, entered in the office of the Clerk of said Court at Rochester New York on the 19th day of August 1988, which (1) affirmed the decision of the Monroe County Board of Elections invalidating the designating petition of Ardeth Houde and validating the designating petitions of Anthony Bonadio, Joan Kohout and James Hendricks in Action #1, (2) affirmed the decision of the Monroe County Board of Elections is sustaining the objections of David King and Jean Higgins in Actions #2 and 3, and (3) affirmed the decision of the Monroe County Board of Elections validating the designating petition of Anthony Bonadio and James Hendricks in Action #4.

and from each and every part thereof.

Dated: August 22, 1988

Yours, etc.,
Michael J. Regan
617 Times Square Building
45 Exchange Street, Roch., NY 146

Attorney(s) for Ardeth Houde
Robert Houde and Appellants

To 1. MONROE COUNTY ATTORNEY, Raymond J. Lum, Esq.

2. DYMKAR AND MULDOON, ESQS., Gary Muldoon, Esq.

3. JOHNSON, MULLAN, BRUNDAGE AND KEIGHER, P.C., John G. Pericak, Esq.

Attorneys for 1. Monroe County Board of Elections; 2. Petitioner Higgins and Respondent Kohout; and 3. Petitioners King, Bonadio and Hendricks.

[Received Aug 22, 1988, 12:28 PM, Monroe Co Clerk's Office]

STATE OF NEW YORK
SUPREME COURT COUNTY OF MONROE

In the Matter of the Application of

ARDETH HOUDE and ROBERT HOUDE,

Petitioners, Index No. 7668/88
ACTION #1

-vs-

RONALD STARKWEATHER and MARGUERITE TOOLE, Commissioners of Elections in the County of Monroe;

and

ANTHONY BONADIO, JOAN S. KOHOUT and JAMES L. HENDRICKS,

Respondents.

For an Order, pursuant to the Election Law, declaring invalid the Democratic and Republican Designating Petitions purporting to designate Anthony Bonadio, Joan S. Kohout and James L. Hendricks for the Office of Monroe County Family Court Judge and the application of Ardeth Houde, an Aggrieved candidate, for an Order declaring valid the Petition designating said candidate for the office of Monroe County Family Court Judge, and compelling the Monroe County Board of Elections to restore said candidate to the ballot, all for the primary election to be held September 15, 1988.

and

In the Matter of the Application of

ANTHONY F. BONADIO and JAMES L. HENDRICKS,

Candidates,
Petitioners, Index No. 7678/88
ACTION #4

-vs-

ROBERT A. HOUDE,

Alleged Objector,

and

RONALD J. STARKWEATHER and MARGUERITE L. TOOLE, Commissioners of the Board of Elections for the County of Monroe,

Respondents.

For an order pursuant to Article 16 of the Election Law, to validate the designating Petition of the Monroe County Republican Party designating Anthony L. Bonadio and James L. Hendricks as Candidates for Family Court, County of Monroe and State of New York.

[Received Aug 22, 1988, 12:28 PM, Monroe Co Clerk's Office]

STATE OF NEW YORK
SUPREME COURT COUNTY OF MONROE

In the Matter of the Application of

JEAN B. HIGGINS,

Objector,
Petitioner, Index No. 7664/88
ACTION #2

-vs—

ARDETH L. HOUDE,

Alleged Candidate

and

RONALD J. STARKWEATHER and MARGUERITE L. TOOLE, Commissioners of the Board of Elections for the County of Monroe,

Respondents.

and

In the Matter of the Application of

DAVID C. KING,

Objector,
Petitioner, Index No. 7679/88
ACTION #3

-vs-

ARDETH L. HOUDE,

Alleged Candidate,

and

RONALD J. STARKWEATHER and MARGUERITE L. TOOLE, Commissioners of Board of Elections for the County of Monroe,

Respondents.

For an order pursuant to Article 16 of the Elections Law, to invalidate and declare null and void the Petition purporting to designate said candidate in the Democratic Party Primary Election to be held September 15, 1988 in and for the County of Monroe, and to restrain Respondent Board from printing and placing the name of Respondent candidate upon the ballot to be used at said election.

**PREARGUMENT STATEMENT**

[Received Aug 22, 1988, 12:28 PM, Monroe Co Clerk's Office]

1. The title of the action on appeal is *Ardeth Houde and Robert Houde v. Ronald Starkweather, Marguerite Toole, Commissioners of Elections in the County of Monroe; Anthony Bonadio, Joan Kohout and James Hendricks, Candidates purportedly designated for the office of Monroe County Family Court Judge; Jean Higgins, objector; and John Doe, and Unknown objector.*

2. The full names of the original parties are provided in (1) above.

3. The Appellants attorney is Michael J. Regan, 617 Times Square Building, 45 Exchange Street, Rochester, New York 14614, Tel: (716) 232-7411.

4. Raymond J. Lum, Esq., Office of the Monroe County Attorney, 307 County Office Building, Rochester, New York 14614, Tel: (716) 428-5280 represents Commissioners Toole and Starkweather.

Gary Muldoon, Esq., of Dymkar and Muldoon, 1135 East Main Street, Rochester, New York 14609, Tel: (716) 482-9903 represents Respondents Kohout and Higgins.

John G. Pericak, Esq., of Johnson, Mullan, Brundage and Keigher, P.C., 47 South Fitzhugh Street, Rochester, New York 14614, Tel: (716) 262-5700 represents Respondents Bonadio, Hendricks and John Doe.

5. Appeal is taken from State Supreme Court, Monroe County.

6. Appeal is taken from Orders entered August 19, 1988.

7. No related action is pending.

8. Proceeding is brought pursuant to N.Y. Election Law to validate designating petition.

9. State Supreme Court validated the designating petition for Respondents Bonadio, Kohout and Hendricks, and invalidating the designating of Appellant Houde.

10. Grounds for reversal include Federal Constitution, and §§ 6-132, 6-134 and 6-154 of the Election Law of the State of New York.

**[State of New York Department of Law Letterhead]**

Telephone: (518) 474-8890

August 24, 1988

Michael J. Regan, Esq.
617 Times Square Building
45 Exchange Street
Rochester, New York

RE: *Houde v. Starkweather & Marguerite Toole, et al.*

Dear Mr. Regan:

This will acknowledge receipt of the Notice of Appeal, a Pre-Argument Statement, the August 18, 1988 Memorandum-Decisions of Acting Supreme Court Judge DePasquale and Appellants' Brief in the above mentioned matter.

Please be advised that we shall not participate in the above mentioned lawsuit at the present time.

We shall appreciate being advised of any final decision when rendered.

Very truly yours,
[Signature]
WAYNE L. BENJAMIN
Assistant Attorney General

To be argued by:

Michael J. Regan, Esq.
Estimated Time for argument:
30 Minutes

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STATE OF NEW YORK
SUPREME COURT
APPELLATE DIVISION-FOURTH DEPARTMENT

ARDETH HOUDE,
ROBERT HOUDE,

Petitioners-Appellants,

vs.

RONALD STARKWEATHER and MARGUERITE TOOLE, Commissioners of Elections in the County of Monroe; ANTHONY BONADIO, JOAN KOHOUT and JAMES HENDRICKS, Candidates purportedly designated for the office of Monroe County Family Court Judge; JEAN HIGGINS, objector; and JOHN DOE, an unknown objector.

Respondents-Respondents.

Index Nos. 7664/88, 7679/88, 7668/88 and 7678/88

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# BRIEF FOR PETITIONERS-APPELLANTS

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Michael J. Regan
Attorney for Petitioners-Appellants
617 Times Square Building
45 Exchange Street
Rochester, New York
Tel: (716) 232-7411

**OBJECTIONS SHOULD NOT HAVE BEEN CONSIDERED BY THE TRIAL COURT TO INVALIDATE THE HOUDE DESIGNATING PETITION.**

On Tuesday, July 26, the Board of Elections received specification of objections which did not contain a legible identification of the objector. *See*, Board's Answering Affidavit, Exhibit B, in *King vs. Houde, et. al.*, Action #3. In *Banker vs. Appeldorf*, 93 AD2d 848 (2d Dept. 1983), the Appellate Division held that §6-154 of the Election Law required the objector to identify himself through his signature. The *Banker* Court reasoned that, because only qualified individuals are eligible to file objections, the objector must identify himself to the Board of Elections and the Candidate named in the petition.

That reasoning compels the conclusion here that the Board of Elections should not have ruled on the John Doe specification of objections. Under §6-154, only a person registered to vote for the public office in question may file objections. Further, no one may file specification of objections unless he has filed general objections within the three day time limit imposed by statute. Here, because the identity of the person filing specifications was not legibly written, neither the Board nor Ardeth Houde had timely notice concerning the identity of the objector, and therefore could not determine whether that person was in fact eligible to file such specifications.

This Court is urged to follow the reasoning in *Banker*, and hold that it is not too much to require that a person filing specifications legibly identify himself as the objector to all interested parties.

## C. THE STATUTORY REQUIREMENT THAT PARTY DESIGNEES FOR COUNTY OFFICE MUST OBTAIN TWO THOUSAND (2,000) SIGNATURES, WHEREAS INDEPENDENT NOMINEES NEED ONLY FIFTEEN HUNDRED (1,500), DENIES ARDETH HOUDE EQUAL PROTECTION OF THE LAW AND DUE PROCESS OF LAW.

Election Law § 6-142 (2)(a) states that fifteen hundred (1,500) signatures will suffice to nominate an independent candidate for County wide office. Election Law § 6-136 (2)(d) requires a party candidate to collect two thousand (2,000) signatures in order to be designated for a County wide office. This unequal classification unduly burdens party candidates, particularly insurgent party candidates, from obtaining access to the ballot.

It is not disputed that Ardeth Houde's Designating Petition contains more than fifteen hundred (1,500) valid signatures. Yet, because she is a party candidate and not an independent candidate, the Election Law of the State of New York denies her access to the ballot. Because such a classification infringes fundamental Constitutional rights, the State has the burden to establish that the classification is necessary to serve a compelling interest. *Elections Board vs. Socialist Worker's Party*, 440 U.S. 173, 184 (1979). Because neither the Attorney General nor the Monroe County Board of Elections has chosen to advance any argument in support of such a compelling interest, the classification must be ruled Constitutionally infirm insofar as it requires party candidates to obtain more that fifteen hundred (1,500) signatures for County wide office. Since the Board of Elections ruled that Ardeth Houde's Designating Petition contained more that fifteen hundred (1,500) signatures, and since that ruling has not been challenged here, Ardeth Houde's Designating Petition should be validated.

## D. THE BOARD OF ELECTIONS IMPROPERLY INVALIDATED THREE HUNDRED AND THIRTY (330) SIGNATURES ON ARDETH HOUDE'S DESIGNATING PETITION.

As stated in Paragraph twenty (20) of the amended petition, the Board of Elections improperly invalidated ninety-one (91) signatures because of uninitialed alterations to signer's residence and District addresses. The trial court's affirmance of this ruling was incorrect.

Alterations to the residence and District addresses of the signatories are not material alterations, and therefore these alterations should not invalidated the signatures in question. *Babor vs. Goldberg*, 282 N.Y. 739 (1940), *Vasti vs. May*, 54 AD2d 533 (3rd Dept. 1976).

Pursuant to Election Law § 6-134 (8), the signatures to a Designating petition need not fill in that information, but need only place a signature on the Petition. Pursuant to § 6-132 (2), the subscribing witness need only attest to the signature and the date of the signature, and not to information as to the signer's residence and district address. Because the Legislature has not prescribed that this information be acknowledged, or that this information be inserted by any particular person, it follows that the candidate's only statutory obligation is to insure that the information is correct. *Bernstein vs. Nelson*, 124 Misc.2d 287 (Supreme Court, 1984), *affd.* 104 AD2d

[Supreme Court of the State of New York]
[Appellate Division, Fourth Judicial Department]

799-B

PRESENT: DOERR, J.P., DENMAN, BOOMER, LAWTON, DAVIS, JJ.

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Matter of Ardeth Houde and Robert Houde, Appellants,

v

Ronald Starkweather and Marguerite Toole, Commissioners of Elections in the County of Monroe; and Anthony Bonadio, Joan S. Kohout and James L. Hendricks, Respondents. Proceeding No. 1.

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Matter of Anthony F. Bonadio and James L. Hendricks, Respondents,

v

Robert A. Houde, Appellant, and
Ronald J. Starkweather and Marguerite L. Toole, Commissioners of the Board of Elections for the County of Monroe, Respondents. Proceeding No. 4.

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Matter of Jean B. Higgins, Respondent,

v

Ardeth L. Houde, Appellant, and
Ronald J. Starkweather and Marguerite L. Toole, Commissioners of the Board of Elections for the County of Monroe, Respondents. Proceeding No. 2.

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Matter of David C. King, Respondent,

v

Ardeth L. Houde, Appellant, and
Ronald J. Starkweather and Marguerite L. Toole, Commissioners of Board of Elections for the County of Monroe, Respon-

dents. Proceeding No. 3.

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The above named Ardeth Houde and Robert Houde having appealed to this court from two orders of the Supreme Court, both entered in the Monroe County Clerk's office on August 18, 1988 and said appeal having been argued by Michael Regan of counsel for appellants, Gary Muldoon of counsel for respondents Kohout and Higgins, Karolyne Armer of counsel for respondent Hendricks, Thomas Spargo of counsel for respondents King and Bonadio, Raymond Lum of counsel for respondent Board of Elections, and due deliberation having been had thereon,

It is hereby ORDERED, That the orders so appealed from be and the same hereby are unanimously affirmed without costs.

Memorandum, which is hereby made a part hereof.

Entered: August 29, 1988

CARMEN S. LEONE, *Clerk*

Supreme Court
APPELLATE DIVISION,
Fourth Judicial Department,
Clerk's Office, Rochester, N.Y.

*I, CARMEN S. LEONE, Clerk of the Appellate Division of the Supreme Court in the Fourth Judicial Department, do hereby certify that this is a true copy of the original order, now on file in this office.*

IN WITNESS WHEREOF, *I have hereunto set my hand and affixed the seal of said Court at the City of Rochester, New York, this Aug 29 1988.*

[Signature]
*Clerk.*

[Seal of the Supreme Court Appellate Division, Fourth Department]

APPELLATE DIVISION — FOURTH DEPARTMENT
Decision Filed August 29, 1988

799-B. (Monroe Co.) — Matter of Ardeth Houde and Robert Houde, Appellants, v Ronald Starkweather and Marguerite Toole, Commissioners of Elections in the County of Monroe; and Anthony Bonadio, Joan S. Kohout and James L. Hendricks, Respondents. Proceeding No. 1. Matter of Anthony F. Bonadio and James L. Hendricks, Respondents, v Robert A. Houde, Appellant, and Ronald J. Starkweather and Marguerite L. Toole, Commissioners of the Board of Elections for the County of Monroe, Respondents. Proceeding No. 4. Matter of Jean B. Higgins, Respondent, v Ardeth L. Houde, Appellant, and Ronald J. Starkweather and Marguerite L. Toole, Commissioners of the Board of Elections for the County of Monroe, Respondents. Proceeding No. 2. Matter of David C. King, Respondent, v Ardeth L. Houde, Appellant, and Ronald J. Starkweather and Marguerite L. Toole, Commissioners of Board of Elections for the County of Monroe, Respondents. Proceeding No. 3. — Motions to dismiss appeal denied and orders unanimously affirmed without costs. Memorandum: In affirming the orders, we note that the Board of Elections invalidated 162 signatures on petitioner's designating petition allegedly due to incomplete addresses of the subscribing witnesses. Upon our review of the record this was error. The witnesses supplied all the information mandated by Election Law §132 and these signatures should be restored. This new finding of fact, however, does not change the result. (Appeal from Orders of Supreme Court, Monroe County, DePasquale, J. — Election Law.) Present: Doerr, J.P., Denman, Boomer, Lawton, Davis, JJ. (Orders entered August 29, 1988.)

State of New York,
Court of Appeals

*At a session of the Court, held at Court of Appeals Hall in the City of Albany on the thirty-first day of August A.D. 1988*

Present, HON. SOL WACHTLER, Chief Judge, presiding.

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4-10 Mo. No. 1074
In the Matter of Ardeth Houde
and Robert Houde,

Appellants,

vs.

Ronald Starkweather, et al.,
Commissioners of Elections in the County
of Monroe, et al.,

Respondents.

(Proceeding No. 1)

---

Matter of Bonadio vs. Houde
(Proceeding No. 4)

---

Matter of Higgins vs. Houde
(Proceeding No. 2)

---

Matter of King vs. Houde
(Proceeding No. 3)

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A motion for leave to appeal to the Court of Appeals in the above causes having heretofore been made upon the part of the appellants herein and papers having been submitted thereon and due deliberation having been thereupon had, it is

ORDERED, that the said motion be and the same hereby is denied.

[Signature]
Donald M. Sheraw
Clerk of the Court

[Received Sep 8, 1988, Appellate Division, Fourth Dept.]

In the Appellate Division
Of the New York State Supreme Court,
Fourth Department

Ardeth Houde,

Appellant,

vs. No. 7668/88

Ronald Starkweather, et at.,

Appellees.

**NOTICE OF APPEAL TO THE SUPREME COURT OF THE UNITED STATES**

Notice is hereby given that Ardeth Houde, the Appellant above-named, hereby appeals to the Supreme Court of the United States from the final judgment of the Appellate Division of the New York State Supreme Court, Fourth Department, affirming the State Supreme Court order denying the application of Ardeth Houde, entered in this action August 18, 1988.

This appeal is taken pursuant to 28 U.S.C. §1257 (2).

September 7, 1988

[Signature]
ARDETH HOUDE,
PRO-SE AND AS A MEMBER OF THE
SUPREME COURT BAR
35 Rensselaer Drive
Rochester, New York 14618
(716) 473-2126